

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: CITY OF LORIMOR	DOCKET NO. P-852
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued April 15, 2004)

On February 5, 2003, the City of Lorimor (Lorimor) filed a petition and exhibits for a pipeline permit for an existing 2-inch diameter natural gas pipeline approximately 4.75 miles long in Madison and Union Counties, Iowa. The petition is for an existing pipeline built in 1971 for which a permit was never requested or granted. The pipeline transports natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to the Lorimor town border station. The pipeline is a transmission line with a maximum allowable operating pressure of 150 psig. Lorimor filed amendments to its petition and exhibits and provided additional information on August 4, October 23, October 29, 2003, and on January 14, 2004.

On April 9, 2004, the Utilities Board (Board) assigned this proceeding to a presiding officer to establish a procedural schedule and conduct a hearing.

THE BOARD'S AUTHORITY AND JURISDICTION

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and

route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

THE ISSUES

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issue, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC 10.

PREPARED TESTIMONY AND EXHIBITS

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Lorimor must submit prepared testimony and exhibits prior to the hearing. At a minimum, Lorimor's prepared testimony must address the issues listed above. In addition, Lorimor must address what it knows about why this pipeline was built without first obtaining a pipeline permit from the Board, what steps Lorimor has undertaken to ensure that it does not construct pipelines without first obtaining a permit from the Board, and why the Board should not impose a civil penalty for the violation pursuant to Iowa Code § 479.31. Lorimor should address the factors in § 479.31 when discussing whether a civil penalty is appropriate.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than Lorimor who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below. Similarly, if the Consumer Advocate takes the position that a civil penalty should or should not be imposed in this case, it must file prepared testimony or a brief in support of its position according to the procedural schedule.

PARTY STATUS

Lorimor and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. Lorimor does not request the right of eminent domain for this pipeline.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the

hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline or the grant of a permit. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of those materials. The official file of this case will be available for inspection at the Board's Records and Information Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine 199 IAC 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There is a link to the administrative rules on the Board's website at www.state.ia.us/iub.

PROPOSAL TO TAKE OFFICIAL NOTICE

Mr. Jeffrey L. O'Neal, utility regulatory engineer for the Board, has prepared a memo dated April 1, 2004, concerning Lorimor's petition. Mr. Reed Helm, utility regulatory inspector for the Board, also prepared a memo dated May 28, 2003, concerning the petition. A copy of each memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memos and of the facts contained therein, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the memos must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prepared testimony and at the hearing. Mr. O'Neal and Mr. Helm will be present at the hearing and available for cross-examination regarding their memos.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Lorimor's petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.
2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service as discussed in this order.

3. The following procedural schedule is established:

a. On or before May 6, 2004, Lorimor must file prepared direct testimony relating to its petition for a permit for its natural gas pipeline, as discussed in this order. If Lorimor wishes to file a prehearing brief, it must do so on or before May 6, 2004.

b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before May 25, 2004. If the Consumer Advocate takes the position that a civil penalty should or should not be imposed in this case, it must file prepared testimony or a brief in support of its position on or before May 25, 2004.

c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Wednesday, June 2, 2004, in Conference Room 3, 350 Maple Street, Des Moines, Iowa. Each party must provide a copy of its prefiled testimony to the court reporter at the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than May 28, 2004, to request that appropriate arrangements be made.

d. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".

4. The undersigned administrative law judge proposes to take official notice of Mr. O'Neal's memo dated April 1, 2004, and of Mr. Helm's memo dated

May 28, 2003, both of which are attached to this order, and of the facts contained therein. Any party objecting to the taking of official notice of either memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine Mr. O'Neal or Mr. Helm concerning the statements in the memos must file a notice of intent to cross-examine no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Lorimor, and will be delivered to the Consumer Advocate. No persons have filed objections to the petition as of the date of this order.

6. Lorimor must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 15th day of April, 2004.

**Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION**

TO: Docket No. P-852

FROM: Jeffrey L. O'Neal

DATE: April 1, 2004

SUBJ: Staff Review of City of Lorimor Petition for Pipeline Permit for 4.75 miles of 2-inch Diameter Natural Gas Pipeline in Madison and Union Counties, Iowa.

On February 5, 2003, the City of Lorimor (Lorimor), filed a petition for pipeline permit for an existing 4.75 miles of 2-inch diameter natural gas pipeline in Madison and Union Counties, Iowa, that has not been previously permitted with the Utilities Board (Board). This pipeline requires a permit under 199 IAC 10.16 because it meets the definition of a transmission line, and because it operates at 150 psig. Reed Helm, Utility Regulation Inspector, determined this pipeline needed a permit but did not have one, and some time prior to November 15, 2002, verbally notified Lorimor it needed to file a petition for permit for this pipeline. On November 15, 2002, Mr. Helm sent a follow-up e-mail to Lorimor regarding this.

An informational meeting was not held for this pipeline. An informational meeting is not required because the pipeline is less than 5 miles long. (See 199 IAC 10.3.)

There do not appear to be any Board records that provide an explanation as to why this pipeline was built without a pipeline permit. Lorimor has indicated it has no records that address this issue.

I am not aware of any other situations in which Lorimor has constructed a pipeline without first obtaining a required permit.

Route and Safety

On March 21, 2003, Mr. Helm conducted a field examination of the proposed route. He filed a report regarding the route inspection on May 28, 2003. On July 24-25, 2003, Mr. Helm inspected the pipeline for compliance with federal pipeline safety standards adopted by the Board. He filed a report regarding this inspection

on August 4, 2003. The inspections found no problems with the route of the pipeline, and no conflicts with pipeline safety standards.

This pipeline carries natural gas from a connection with a Natural Gas Pipeline Company of America pipeline to the Lorimor town border station. (Natural Gas Pipeline Company of America is owned by Kinder Morgan.) At the town border station, the gas pressure is reduced for delivery through gas distribution mains to customers in Lorimor. The pipeline has a maximum allowable operating pressure of 150 psig.

This pipeline was constructed in 1971. The route is on private property, except at road crossings. The entire route is in a Class 1 location as defined by Federal Minimum Safety Standards in 49 CFR Part 192. Class 1 is a low population density classification. (See § 192.5 for definitions of class locations.)

Petition

By letters dated March 3, 2003, July 9, 2003, September 25, 2003, October 24, 2003, and December 4, 2003, Board staff advised Lorimor of petition deficiencies requiring correction, and requested additional information on certain items. On, August 4, 2003, October 23, 2003, October 29, 2003, and January 14, 2004, Lorimor filed revisions to the petition and exhibits and provided additional information.

No objections have been filed as of the date of this report.

Conclusions

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the pipeline complies with all design, construction, and testing requirements of the Board. Recent inspections by Board staff found no problems with the route of the pipeline, and no conflicts with pipeline safety standards. The filing appears in sufficient order that the petition can be set for hearing.

**IOWA DEPARTMENT OF COMMERCE
UTILITIES DIVISION
SAFETY AND ENGINEERING SECTION**

TO: The File

DATE: May 28, 2003

FROM: Reed Helm

FILE: P-852

SUBJECT: Petition for Pipeline Permit for a Natural Gas Pipeline in Madison and Union Counties, Iowa, for Lorimor Municipal Gas System.

The route of the above mentioned natural gas pipeline was inspected on March 21, 2003. Exhibit A, a route map and other information received from Mary Seales, City Clerk, City of Lorimor, was used as a guide. The pipeline is approximately 4.75 miles of 2.375 inch outside diameter, 0.154 inch wall thickness Grade A steel millwrapped coated pipe with a Maximum Allowable Operating Pressure (MAOP) of 150 psig.

The two inch steel pipeline begins at the Natural Gas Pipeline of America (NGPL) regulator station located in the SW Quarter of the NW Quarter of Section 22, Township 74 North Range 28 West, Madison County, Iowa and proceeds east ¼ mile on the north side of Carver Road. Then proceeds south on the east side of Carver Road, 3 tenths mile, then crosses to the west side of Carver Road. Then proceeds south on the west side of Carver Road 1.3 miles and crossing 330th Street. Then runs easterly along the south side of 330th Street ¼ mile then southerly 2 .65 mile on the west side of Warbler Avenue and continuing south on the west side of US Highway 169 to the Lorimor TBS located in the SE Quarter of the SE quarter of Section 10 in Union county Township 73 N, Range 28 W.

The entire pipeline is in private right-of-way in a Class 1¹ location. The pipeline passes within 50 feet of four farmhouses. The terrain along the pipe begins in gentle rolling crop land, then the majority of the route is in hilly permanent pasture. The pipeline route crosses three secondary county gravel roads at right angles.

The examination of the route found no safety code compliance issues, maintenance needs, or other matters that need to be addressed in this docket.

¹ Class locations are a population density index from 49 CFR Part 192 Section 5. Class 1 indicates little if any development near the route.